IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

GIBBS PATRICK FARMS, INC.,

:

Plaintiff,

v.

Civil Action No. 7:06-cv-48 (HL)

SYNGENTA SEEDS, INC., and R. D. CLIFTON CO., INC. d/b/a CLIFTON SEED CO. GEORGIA,

:

Defendants.

ORDER

Before the Court is a "Motion for Leave to File a Reply to Defendants Syngenta Seeds, Inc.'s and Clifton Seed Company Georgia's First Additional Defenses" (Doc. 14) filed by Plaintiff Gibbs Patrick Farms, Inc. ("Gibbs Patrick Farms"). For the reasons set forth below, the Motion is denied.

Gibbs Patrick Farms has filed a Motion¹ (<u>id.</u>) in which it seeks to reply to affirmative defenses² included in the answers filed by Syngenta Seeds, Inc. and Clifton Seed Company.

¹ By filing a motion seeking permission to submit such a reply, rather than simply filing a reply to affirmative defenses, Gibbs Patrick Farms at least avoided the pitfall of presumptiveness common in similar cases. See, e.g., Fleming v. County of Kane, No. 85 C 8641, 1986 WL 4994 (N.D. Ill. Apr. 18, 1996).

² The parties interchangeably use the terms "affirmative" and "additional" defenses. The Court disregards this shifting terminology, as the key inquiry under Rule 7(a) is whether the answer contains counterclaims, not whether any defenses it might contain are affirmative or additional.

Defendants filed a Response (Doc. 21) in opposition. Gibbs Patrick Farms filed no reply.

answer unless the answer contains a counterclaim or the plaintiff is ordered to reply by the

Federal Rule of Civil Procedure 7(a) forbids a plaintiff from submitting a reply to an

court. See also Fed. R. Civ. Proc. 12(a)(2) (authorizing a plaintiff to serve a reply to a

counterclaim contained in an answer). A plaintiff is not prejudiced by Rule 7(a) because

Federal Rule of Civil Procedure 8(d) provides averments in pleadings to which no responsive

pleadings are required or permitted are assumed to be denied. As a result, numerous courts have

held that replies to affirmative defenses will generally not be permitted. See, e.g., Merrill Lynch

Bus. Fin. Servs., Inc. v. Performance Mach. Sys. U.S.A., Inc., No. 04-60861, 2005 WL 975773,

at *12 (S.D. Fla. Mar. 4, 2005); Petit v. City of Chicago, 239 F.Supp.2d 761, 771 (N.D. Ill.

2002); Moviecolor, Ltd. v. Eastman Kodak Co., 24 F.R.D. 325, 326 (S.D.N.Y. 1959).

Here, Gibbs Patrick Farms need not file a reply to Defendants' affirmative defenses, as

they are already deemed denied. The parties' various claims and defenses are better addressed

in the context of motions under Federal Rules of Civil Procedure 12 and 56 at a later point, if

appropriate. Accordingly, the "Motion for Leave to File a Reply to Defendants Syngenta Seeds,

Inc.'s and Clifton Seed Company Georgia's First Additional Defenses" (Doc. 14) filed by Gibbs

Patrick Farms is denied.

SO ORDERED, this the 12th day of October, 2006.

s/ Hugh Lawson HUGH LAWSON, JUDGE

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